

Frequently Asked Questions About Oil And Gas Development

(Responses are based on the most current information.)

1. Is industry bound by Illinois oil/gas regulations when drilling/producing/completing oil/gas wells on FS land?

The Illinois Oil and Gas Act, [225 ILCS 725](#), and Title 62 of the [Illinois Administrative Code Chapter I, Part 240](#), are two key sources of state law relating to oil and gas development. Persons seeking to develop oil and gas on the Forest must obtain applicable state permits for both federal and non-federal mineral estates. In general, the Supremacy and Property Clauses of the Constitution can provide the legal framework for applicability of state law on federal land. See Appendix G of the Final Environmental Impact Statement (FEIS) on the Forest's 2006 Land and Resource Management Plan (Plan), "Reasonably Foreseeable Development Scenario for Oil and Gas": (http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5151582.pdf, pp. 127-134)

2. If yes, will they have to get permits from both the State and the FS?

Oil and gas development may require permits from both the state and federal governments, depending upon the mineral ownership. The Bureau of Land Management (BLM) is the federal agency responsible for final approval of an Application for Permit to Drill (APD) on federal minerals. The Forest Service is responsible for approving the Surface Use Plan of Operation (SUPO), a subset of the drilling permit dealing with the surface use. The Forest Service may issue special-use permits in particular circumstances, such as access for pipelines or electric lines.

3. If not bound by Illinois regulations, will they be following BLM regulations?

Illinois oil and gas regulations apply to all wells drilled in Illinois. BLM regulations are only applicable to development of federal oil and gas resources beneath the Forest, not for development of non-federal oil and gas resources. Below is the web address of the BLM's Onshore Orders and supplementary documents that are followed for processing each new oil and gas permit application. http://www.blm.gov/es/st/en/prog/minerals/issue_of_leases.print.html

4. When are BLM regulations going to be finalized?

A supplemental notice of proposed rulemaking for BLM's hydraulic fracturing rule was published for a 30-day public comment period on May 24, 2013 (78 Fed. Reg. 31636). The comment period was extended for an additional 60 days on June 10, 2013 (78 Fed. Reg. 34611). Please contact the BLM Northeastern States Field Office for the most current information regarding the status of the BLM hydraulic fracturing rulemaking at (414) 297-4400

5. What agency will be responsible for enforcement?

BLM enforces the requirements of its federal oil and gas leases and permits. The Forest Service monitors and enforces the conditions of the Surface Use Plan of Operation (SUPO) at a federal well site. The State of Illinois enforces its regulations concerning permits issued under the Illinois Oil and Gas Act. The Forest Service monitors and enforces the conditions of special-use permits and other federal permits issued by the agency.



6. If the FS does not own 100% of the oil and gas rights:

- a. what surface rights does the FS have?
- b. does the FS have any authority to be involved in the siting of a well?
- c. does NEPA come in to play at all?
- d. how much, if any, advance notice is the company required to give the FS before entering the land to drill?

Generally speaking, private mineral estate owners may enter upon and use as much of the surface overlying the mineral estate as is “reasonably necessary” to develop their mineral interest: “[I]and management decisions must not preclude the ability of private mineral owners to make reasonable use of the surface as defined by deed and law,” (Forest Plan FW28.6, p 46). An understanding of the specific deed language is essential in each case of privately owned mineral development. (Please also see, e.g., [36 CFR 251.15](#), addressing more recent reserved mineral right situations, and Forest Service Manual, [Chapter 2830](#), “Mineral Reservations and Outstanding Mineral Rights.”)

The documents listed below include authority and/or direction for managing surface-use associated with the exercise of non-federal reserved mineral rights:

1911, 1938, 1938, 1939, 1947, 1950, and 1963 Secretary’s Rules and Regulations	FSM 2830.1-2830.5, FSM 2831
36 CFR 251.15 (1963 Secretary’s Rules and Regulations codified)	State law
	Deed language in severance chain and in conveyance at the time of acquisition

The following documents include authority and/or direction for managing surface-use associated with the exercise of non-federal outstanding mineral rights:

FSM 2830.1-2830.5, FSM 2832	Deed language in severance chain and in conveyance at the time of acquisition
State Law	

Additional information about reserved and outstanding minerals can also be found on the Forest Service Minerals and Geology website: www.fs.fed.us/geology.

7. If the FS owns a majority share or 100% of the oil/gas rights:

- a. what are the exact steps that are taken if there is an expression of interest?**
- b. will the FS be under pressure to comply with the Multiple Use directive?**
- c. will NEPA apply?**

The major steps in the development of federally-owned oil and gas resources on the Forest include:

- The Forest Plan identifies federal mineral lands available for oil or gas leasing subject to standard lease terms and special stipulations. See Appendix G of the FEIS on the 2006 Forest Plan.
- Private industry reviews the available federal mineral lands.
- If interested, industry representatives submit to BLM an “expression of interest” to lease parcel(s) of federal mineral lands for oil and/or gas development.

- BLM notifies the Regional Forester of the industry's expression of interest. The Forest conducts a review of the parcel(s) of federal mineral lands (which are the subject of the expression of interest) for consistency with the Forest Plan.
- If the review concludes that leasing is appropriate, the Forest would recommend that the Regional Forester consent to BLM's leasing of the parcel(s) of federal mineral lands with appropriate stipulations. If the review concludes that leasing is inconsistent with the Forest Plan or has not been adequately addresses in a NEPA document, the Forest would recommend that the Regional Forester not consent to lease at that time.
- If consent is granted, BLM would offer the parcel(s) of federal mineral lands for competitive lease sale, subject to appropriate lease terms and stipulations.
- The purchaser of the competitive lease (lessee) would have the right to explore and develop the oil/gas resources on the lease subject to the terms of the lease. Prior to drilling, an Application for Permit to Drill (APD) must be approved by BLM. The SUPO, a part of the APD, describes activities that will take place on NFS lands and must be approved by the Forest.
- The APD and SUPO would be subject to site-specific environmental analysis.

See also Appendix I of the FEIS on the 2006 Forest Plan, pp. 305-306, 308.

An overview of Forest Service responsibilities, including Forest Service oil and gas regulations and relevant provisions of the Forest Service's manual can be found on the Forest Service's Energy Minerals webpage: www.fs.fed.us/geology/energy.html. Information about the BLM's leasing process can be found on the BLM's Oil and Gas website: www.blm.gov/wo/st/en/prog/energy/oil_and_gas/questions_and_answers.html. Information about Onshore Order No. 1 and the ADP/SUPO can also be obtained through the BLM website: www.blm.gov/wo/st/en/prog/energy/oil_and_gas/Onshore_Order_no1.html.

8. Do any of our 7 Wilderness Areas have any outstanding or severed gas/oil rights?

If yes, are there any special protections for Wilderness?

Yes they do contain severed oil and gas rights.

All seven wildernesses on the Forest include lands with severed oil and gas rights. As noted above, “[l]and management decisions must not preclude the ability of private mineral owners to make reasonable use of the surface as defined by deed and law,” (Forest Plan FW28.6, p. 46). An understanding of the specific deed language is essential in each case of privately owned mineral development.